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Winters Law Firm
2 1820 East 17th Street
Santa Ana, California 92705
3 Telephone: 714-836-1381
Facsimile: 714-542-2495
4 State Bar No. 89872

5 Attorney for Plaintiff

6 UNITED STATES BANKRUPTCY COURT
7 NORTHERN DISTRICT OF CALIFORNIA
8 SAN JOSE DIVISION

9
10 IN RE: JENNIFER PHILOAN PHAN,

Case No. 10-50707-RLE-13

11 Debtor.

Chapter 13

12 FIRST NATIONAL BANK OF OMAHA,

**COMPLAINT SEEKING
EXCEPTION TO DISCHARGE
PURSUANT TO 11 U.S.C.
§523(a)(2)(A)**

13 Plaintiff,

14 v.

15 JENNIFER PHILOAN PHAN,

Adv. No. 10-_____

16 Defendant.

Hon. Roger L. Efremsky

17
18 The Plaintiff, First National Bank of Omaha, by its attorney,
19 for its Complaint against the Defendant, alleges as follows:

20 1. This Court has jurisdiction over this proceeding pursuant
21 to 28 U.S.C. §1334 and §157, and this matter is a core proceeding
22 pursuant to 28 U.S.C. §157.

23 2. The Debtor filed a Petition, and an Order for Relief was
24 entered under 11 U.S.C. Chapter 13 on January 26, 2010.

25 3. At all times mentioned herein, the Defendant, Jennifer
26 Philoan Phan, had possession of a First National Bank of Omaha
27 credit account, number xxxx-xxxx-xxxx-9669, which account the
28 Defendant opened in October 2005.

1 4. On July 13, 2009, the account was in good standing and
2 the balance on the abovementioned account was zero.

3 5. On July 14, 2009 and July 15, 2009, in only two days, the
4 Defendant made purchases and took a cash advance on this account
5 totaling \$16,000.00. See copies of account statements, attached
6 hereto and incorporated herein, marked Exhibit A.

7 6. The Defendant's charges set forth in Exhibit A, included
8 but were not limited to: a cash advance in the amount of
9 \$8,000.00; a charge at Fry's Electronics in the amount of
10 \$6,000.00; and a charge at Jessica's Beauty Salon in the amount
11 of \$2,000.00. See copies of account statements, attached hereto
12 and incorporated herein, marked Exhibit A.

13 7. The Defendant failed to make the minimum monthly payments
14 and did not even make a single payment on this account after
15 incurring the abovementioned \$16,000.00 in charges.

16 8. On January 26, 2010, the Debtor's Chapter 13 bankruptcy
17 was actually filed with the Court.

18 9. Although required by the Official Bankruptcy Forms, the
19 Debtor failed to list in her sworn Schedule F, the dates when any
20 of her unsecured debts were incurred.

21 10. Therefore, regarding the information referred to in the
22 above paragraph, the Debtor either intentionally concealed from
23 or inadvertently failed to disclose such information to the Court,
24 the U.S. Trustee, the Trustee, and her creditors, or the Debtor
25 failed to maintain her financial records and does not have such
26 information available to include in her sworn Schedules.

27 11. Although required by the Official Bankruptcy Forms, the
28 Debtor failed to list in her sworn Schedule F, the consideration

1 received for most of her unsecured debts, except for the words
2 "Credit Card Debt (Unsecured)", which she set forth for each
3 unsecured debt therein, except for one.

4 12. Therefore, regarding the information referred to in the
5 above paragraph, the Debtor either intentionally concealed from
6 or inadvertently failed to disclose such information to the Court,
7 the U.S. Trustee, the Trustee, and her creditors, or the Debtor
8 failed to maintain her financial records and does not have such
9 information available to include in her sworn Schedules.

10 13. Although required by the Official Bankruptcy Forms, the
11 Debtor failed to list in response to Question No. 9 on the
12 Debtor's sworn Statement of Financial Affairs, the date(s) of her
13 payment(s) to her bankruptcy attorney, yet her attorney's Rule
14 2016(b) Statement indicates that she did in fact pay \$500.00
15 towards her bankruptcy legal fees and/or bankruptcy filing fee.

16 14. Therefore, regarding the information referred to in the
17 above paragraph, the Debtor either intentionally concealed from
18 or inadvertently failed to disclose such information to the Court,
19 the U.S. Trustee, the Trustee, and her creditors, or the Debtor
20 made no effort to obtain such information from her bankruptcy
21 attorney to include in her sworn Statement of Financial Affairs.

22 15. Pursuant to the Debtor's sworn Statement of Financial
23 Affairs, in the year prior to and up through the Debtor's
24 bankruptcy filing, the Debtor did not transfer any property other
25 than in the ordinary course of the Debtor's financial affairs.

26 16. Pursuant to the Debtor's sworn Statement of Financial
27 Affairs, in the year prior to and up through the Debtor's
28 bankruptcy filing, the Debtor did not suffer any losses from fire,

1 theft, or gambling.

2 17. Pursuant to the Debtor's sworn Statement of Financial
3 Affairs, in the year prior to and up through the Debtor's
4 bankruptcy filing, the Debtor did not have any property
5 repossessed, sold at foreclosure, or transferred through a deed
6 in lieu of foreclosure.

7 18. Pursuant to the Debtor's sworn Statement of Financial
8 Affairs, the Debtor resided at the same address and did not move
9 within the three years prior to filing bankruptcy.

10 19. Pursuant to the Debtor's sworn Schedule I, at the time
11 of the bankruptcy filing, the Debtor was employed by Quickly as
12 a Manager.

13 20. Pursuant to the Debtor's sworn Schedule I, the Debtor's
14 monthly income was approximately \$6,607.38.

15 21. Pursuant to the Debtor's sworn Schedule I, there are no
16 increases or decreases in income anticipated to occur within the
17 year following the Debtor's bankruptcy filing.

18 22. Pursuant to the Debtor's sworn Schedule J, the Debtor's
19 average monthly living expenses were approximately \$5,932.31.

20 23. Pursuant to the Debtor's sworn Schedule J, there are no
21 increases or decreases in expenses anticipated to occur within the
22 year following the Debtor's bankruptcy filing.

23 24. The minimum monthly payments on the Debtor's \$131,372.00
24 of unsecured debt (based upon minimum monthly payments estimated
25 at between 2% and 3% of the outstanding principal balances on her
26 total unsecured debt) were between \$2,600.00 and \$4,000.00 each
27 month.

28 //

1 25. Given the Debtor's monthly income, monthly living
2 expenses, and circumstances as set forth in her sworn Schedules
3 and sworn Statement of Financial Affairs, at the time the
4 Defendant incurred the abovementioned \$16,000.00 in charges on
5 this account, the Debtor's monthly disposable income was not
6 sufficient to pay even the minimum monthly payments on her
7 unsecured debt.

8 26. When the Defendant accepted and opened this credit
9 account with the Plaintiff, she agreed to abide by the terms set
10 forth in the account agreement.

11 27. The Defendant's use of this account was governed by the
12 terms of the account agreement.

13 28. At the time the Defendant incurred the abovementioned
14 \$16,000.00 in charges on this account, the Defendant represented
15 that she had the intention to repay said debt to the Plaintiff
16 pursuant to the terms of the account agreement.

17 29. At the time the Defendant incurred the abovementioned
18 \$16,000.00 in charges on this account, the Defendant represented
19 that she agreed to abide by the terms of the account agreement.

20 30. The dates when and the places where the Defendant made
21 the abovementioned representations, are listed in the account
22 statements marked Exhibit A, and attached hereto.

23 31. The Plaintiff relied upon the Defendant's
24 representations of intent to repay the Plaintiff pursuant to the
25 terms of the account agreement and representations of agreement
26 to abide by the terms of the account agreement in allowing the
27 Defendant to use this account and incur the charges on July 14,

28 //

1 2009 and July 15, 2009, as set forth in Exhibit A, attached
2 hereto.

3 32. The Defendant did not advise the Plaintiff that she
4 would be unable to honor the above representations or that she
5 would be unable to abide by the terms of the account agreement at
6 the time that she made the representations and made the charges
7 set forth in Exhibit A, attached hereto.

8 33. The Plaintiff was justified in its reliance upon the
9 Defendant's representations of intent to repay the Plaintiff
10 pursuant to the terms of the account agreement and representations
11 of agreement to abide by the terms of the account agreement.

12 34. The Defendant incurred the abovementioned \$16,000.00 in
13 charges on the Plaintiff's account at a time when the Defendant
14 was unable to meet her existing financial obligations as they
15 became due.

16 35. Based upon all of the above, at the time the Defendant
17 incurred the abovementioned \$16,000.00 in charges, the Defendant
18 intended to deceive the Plaintiff in that she either had no
19 intention to repay said debt to the Plaintiff pursuant to the
20 terms of the account agreement or the Defendant knew or should
21 have known that she had no ability to repay said debt to the
22 Plaintiff pursuant to the terms of the account agreement.

23 36. Based upon all of the above, at the time the Defendant
24 incurred the abovementioned \$16,000.00 in charges, the Defendant
25 intended to deceive the Plaintiff in that she made such
26 representations of intent to repay the Plaintiff pursuant to the
27 terms of the account agreement and representations of agreement
28 to abide by the terms of the account agreement with a reckless

disregard as to the truthfulness of said representations.

37. Therefore, the Defendant obtained said money from the Plaintiff by false pretenses, false representation, or actual fraud, and at the time of filing, the debt owed to the Plaintiff was in the amount of \$18,045.40, and for the above reasons, this indebtedness to Plaintiff, First National Bank of Omaha, is nondischargeable in bankruptcy pursuant to 11 U.S.C. §523(a)(2)(A).

WHEREFORE, Plaintiff, First National Bank of Omaha, respectfully prays that this Court:

A. Determine that the Defendant's indebtedness to the Plaintiff is an exception to discharge pursuant to 11 U.S.C. §523(a)(2)(A),

B. Grant judgment to the Plaintiff, First National Bank of Omaha, against the Defendant, Jennifer Philoan Phan, in the amount of \$18,045.40, plus the \$250.00 Adversary Proceeding filing fee, for a total of \$18,295.40, plus interest from the date of the bankruptcy filing, plus the Plaintiff's other costs and disbursements incurred for the collection of this debt and of this action as permitted by applicable law, and

C. Grant the Plaintiff such other and further relief as to this Court seems just and proper.

Dated: May 14, 2010

/s/ Dennis Winters
Dennis Winters, Esq., Bar No. 89872
Attorney for Plaintiff
Winters Law Firm
1820 East 17th Street
Santa Ana, CA 92705
Telephone: 714-836-1381
Facsimile: 714-542-2495
Email: WINTERSLAWFIRM@cs.com

Exhibit A

① First National Bank
Omaha

VISA

First National Bank Omaha
P.O. Box 2557
Omaha, NE 68103-2557

055679

JENNIFER PHAN
577 PASEO REFUGIO
MILPITAS CA 95035-3907

Account Number: 9669
Page 001 of 002
Payment Due Date: August 27, 2009
New Balance: \$16,353.63
Minimum Payment Due: \$513.00

① Make checks payable to
First National Bank
Omaha Amount Enclosed



Change of Address? Please
check box and complete reverse side. ☐

9669 0000000051300 0000001635363

PLEASE DETACH HERE AND RETURN TOP PORTION WITH YOUR PAYMENT

Visa Signature ① Card

Account Number: 9669

Payment Due		Account Summary		Credit Line	
Statement Closing Date	08-07-09	Previous Balance	\$ 0.00	Total Credit Limit*	\$ 16,000.00
Days in Billing Cycle	30	Payments and Credits	- \$ 0.00	Cash Limit †	\$ 8,000.00
Payment Due Date	08-27-09	New Transactions	+\$ 16,000.00	Available Credit	\$ 0.00
Amount Past Due	\$ 0.00	Total Billed		Available Cash	\$ 0.00
Minimum Payment Due	\$ 513.00	FINANCE CHARGES	+\$ 353.63		
		New Balance	\$ 16,353.63		

REWARDS SUMMARY

Total points earned this month..... 0
Bonus points earned this month..... 0
Total points redeemed this month..... 0
Accumulated point total..... 1,055
Points expiring next month..... 0
Remember...keep using your card to increase
your rewards total - the more you charge, the
more points you earn to get the reward you want!

Need Help? Online Access www.firstnational.com		
Customer Service Toll Free 1-888-530-3626	Balance Transfer Hotline Toll Free 1-877-388-8231	TDD Telecommunications Device for the Deaf Toll Free 1-800-925-2833

TRANSACTIONS

Purchase Date	Post Date	Reference Number	Merchant Name / Transaction Description	Credits (CR) and Debits
7-14	7-14	24492159196769030235447	FRY'S ELECTRONICS #21 FREMONT CA	\$6,000.00
7-14	7-15	74492159196286529004940	CASH WELLS FARGO C/A #049 MILPITAS CA	\$8,000.00
7-14	7-15	74694519196000196080330	CASH ADVANCE FEE*FC*	\$240.00
7-15	7-15	24493989196200871300107	JESSICA'S BEAUTY SALON MILPITAS CA	\$2,000.00

Charge Summary	Average Daily Balance	Daily Periodic Rate	Corresponding Annual Percentage Rate	ANNUAL PERCENTAGE RATE
Purchases	\$ 6,630.11	0.0383%	13.990%	0.00%
Cash Advance	\$ 6,912.01	0.0548%	19.990%	53.04%
Billed Periodic Rate FINANCE CHARGES \$113.63				

Additional Information Regarding Your Account

Visa Concierge is at your service - just call Visa 24 hours a day, seven days a week at 800-953-7392.
Need to speak to a Customer Service Representative? Just call us at 877-932-3222.
Need to reach us while you are away from the United States? Dial 402-346-1553.

* Please refer to the "No Preset Spending Limit" section on the reverse side of your statement for complete details concerning the no preset spending limit and revolving credit limit.

Effective with your first billing cycle beginning on or after October 1, 2009, the following changes will apply to the terms of your account:

- (1) The Preferred Rate for Purchases and Balance Transfers on your account may vary and will be the greater of a Floor Rate equal to an **ANNUAL PERCENTAGE RATE** of 25.99% (a daily periodic rate of 0.0712%) or an **ANNUAL PERCENTAGE RATE** equal to the Index (set forth below) plus a Margin of 23.99%. Currently, this **ANNUAL PERCENTAGE RATE** is 27.24% (a daily periodic rate of 0.0746%); and
- (2) The Preferred Rate for Cash Advances on your account may vary and will be the greater of a Floor Rate equal to an **ANNUAL PERCENTAGE RATE** of 25.99% (a daily periodic rate of 0.0712%) or an **ANNUAL PERCENTAGE RATE** equal to the Index (set forth below) plus a Margin of 23.99%. Currently, this **ANNUAL PERCENTAGE RATE** is 27.24% (a daily periodic rate of 0.0746%).

Your Index for purposes of the rates set forth above is the highest U.S. Prime Rate as published in *The Wall Street Journal* during the 90 days immediately preceding the last day of each calendar month (the determination date) and will be effective for the entire billing cycle that ends in the second month after the determination date.

Your Introductory Rate(s) and/or Special Offer Rate(s), if any, for Purchases and Balance Transfers are not being changed at this time.

Continued next page

Additional Information Regarding Your Account

Your account is reviewed from time to time using a credit scoring system that assigns a numerical value to various items of information that we consider relevant. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers. Because you did not score a sufficient number of points, your Preferred Rate(s) have been increased as indicated above. The reasons you did not score well compared with other customers were:

1. Utilization of revolving account(s) too high
2. Time since delinquency is too recent or unknown
3. Level of delinquency on accounts

In reviewing your account, the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision to make this change. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have changed the terms of your account. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. It can be obtained by contacting: Experian Inc., 701 Experian Pkwy, PO Box 2002, Allen, TX 75013. Telephone Number: 888-397-3742. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. If you have any questions regarding this notice, you should contact us at: Credit Department, P.O. Box 3437, Omaha, NE 68172, or call us at the telephone number listed on your statement.

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Avenue, Suite 3450, Houston, Texas 77010.

You have the right to cancel your account at any time. To do so, notify us in writing. You must include your name, address and account number and mail it to Cardmember Services, P.O. Box 3788, Omaha, NE 68103-3788. When you cancel, your account will be closed and you will be required to pay the balance under the current terms. Unless we receive your written notice before your next billing cycle, the above changes will apply to all current and future balances as of the effective date indicated above.

Thank You
For Your Business

First National Bank
Omaha

VISA

First National Bank Omaha
P.O. Box 2557
Omaha, NE 68103-2557

040936

JENNIFER PHAN
577 PASEO REFUGIO
MILPITAS CA 95035-3907

Account Number: 9669
Page 001 of 001
Payment Due Date: October 3, 2009
New Balance: \$16,639.19
Minimum Payment Due: \$962.00

Make checks payable to
First National Bank
Omaha Amount Enclosed



Change of Address? Please
check box and complete reverse side. ☐

9669 0000000096200 0000001663919

PLEASE DETACH HERE AND RETURN TOP PORTION WITH YOUR PAYMENT

Visa Signature [®] Card

Account Number: 9669

Payment Due		Account Summary		Credit Line	
Statement Closing Date	09-08-09	Previous Balance	\$ 16,353.63	Total Credit Limit*	\$ 16,000.00
Days in Billing Cycle	32	Payments and Credits	- \$ 0.00	Cash Limit †	\$ 8,000.00
Payment Due Date	10-03-09	New Transactions	+\$ 39.00	Available Credit	\$ 0.00
Amount Past Due	\$ 513.00	Total Billed		Available Cash	\$ 0.00
Minimum Payment Due	\$ 962.00	FINANCE CHARGES	+\$ 246.56		
		New Balance	\$ 16,639.19		

Important Information Regarding Your Account

Important Information Regarding Your Payment Due Date

Good news! We have increased the amount of time before
your payment is due - please see this change reflected above.

Need Help?	Online Access www.firstnational.com		
	Customer Service	Balance Transfer Hotline	TDD Telecommunications Device for the Deaf
	Toll Free 1-888-530-3626	Toll Free 1-877-388-8231	Toll Free 1-800-925-2833

TRANSACTIONS

Purchase Date	Post Date	Reference Number	Merchant Name / Transaction Description	Credits (CR) and Debits
8-27	9-08	74694519251000251062000	LATE FEE	\$39.00

Charge Summary	Average Daily Balance	Daily Periodic Rate	Corresponding Annual Percentage Rate	ANNUAL PERCENTAGE RATE
Purchases	\$ 8,063.55	0.0383%	13.990%	13.99%
Cash Advance	\$ 8,424.97	0.0548%	19.990%	20.00%
Billed Periodic Rate FINANCE CHARGES \$246.56				

Additional Information Regarding Your Account

Visa Concierge is at your service - just call Visa 24 hours a day, seven days a week at 800-953-7392.
Need to speak to a Customer Service Representative? Just call us at 877-932-3222.
Need to reach us while you are away from the United States? Dial 402-346-1553.

* Please refer to the "No Preset Spending Limit" section on the reverse side of your statement
for complete details concerning the no preset spending limit and revolving credit limit.

Go Paperless for Safer Banking

Statements sitting in your mailbox can increase your risk of getting your financial information stolen.
You can limit your risk by going paperless with eStatements. It provides secure access to up to 7 years
of past statements and it's completely FREE. When you sign up for eStatements, we will send you an
email every month letting you know your statement is ready. Log in to firstnational.com and go to
Account Services tab for more information on how to enroll today!

Free Online Credit Card Payments

You can pay your credit card bill online anytime day or night at
www.firstnational.com. It's fast, safe and completely secure.

① First National Bank
Omaha

VISA

First National Bank Omaha
P.O. Box 2557
Omaha, NE 68103-2557

042887

JENNIFER PHAN
577 PASEO REFUGIO
MILPITAS CA 95035-3907

Account Number: 1 9669

Page 001 of 001

Payment Due Date: November 2, 2009

New Balance: \$16,913.16

Minimum Payment Due: \$1,402.00

① Make checks payable to
First National Bank
Omaha

Amount Enclosed



Change of Address? Please
check box and complete reverse side. ☐

9669 0000000140200 0000001691316

PLEASE DETACH HERE AND RETURN TOP PORTION WITH YOUR PAYMENT

Visa Signature ® Card

Account Number

9669

Payment Due		Account Summary		Credit Line	
Statement Closing Date	10-08-09	Previous Balance	\$ 16,639.19	Total Credit Limit*	\$ 16,000.00
Days in Billing Cycle	30	Payments and Credits	- \$ 0.00	Cash Limit †	\$ 8,000.00
Payment Due Date	11-02-09	New Transactions	+\$ 39.00	Available Credit	\$ 0.00
Amount Past Due	\$ 962.00	Total Billed		Available Cash	\$ 0.00
Minimum Payment Due	\$ 1,402.00	FINANCE CHARGES +	\$ 234.97		
		New Balance	\$ 16,913.16		

Need Help? Online Access www.firstnational.com			
Customer Service Toll Free 1-888-530-3626		Balance Transfer Hotline Toll Free 1-877-388-8231	TDD Telecommunications Device for the Deaf Toll Free 1-800-925-2833

TRANSACTIONS

Purchase Date	Post Date	Reference Number	Merchant Name / Transaction Description	Credits (CR) and Debits
10-03	10-08	74694519281000281062000	LATE FEE	\$39.00

Charge Summary		Average Daily Balance	Daily Periodic Rate	Corresponding Annual Percentage Rate	ANNUAL PERCENTAGE RATE
Purchases		\$ 8,190.96	0.0383%	13.990%	13.99%
Cash Advance		\$ 8,569.25	0.0548%	19.990%	20.00%
Billed Periodic Rate FINANCE CHARGES \$234.97					

Additional Information Regarding Your Account

Visa Concierge is at your service - just call Visa 24 hours a day, seven days a week at 800-953-7392.
Need to speak to a Customer Service Representative? Just call us at 877-932-3222.
Need to reach us while you are away from the United States? Dial 402-346-1553.

* Please refer to the "No Preset Spending Limit" section on the reverse side of your statement for complete details concerning the no preset spending limit and revolving credit limit.

Pursuant to the terms of your Cardmember Agreement, Penalty Rate(s) on your account have been triggered. The Penalty Rate(s) will be applicable to your existing and future balances effective December 9, 2009, and will remain in effect for a potentially indefinite period of time. Your increased Penalty Rate(s) for these balances will be as follows:

The Penalty Rate for Purchases and Balance Transfers as well as Introductory and Special Offer Purchases and Balance Transfers on your account may vary and will be an ANNUAL PERCENTAGE RATE equal to the Index plus a Margin of up to 23.99%. The current Margin is 23.99%. Currently this ANNUAL PERCENTAGE RATE is 27.24% (a daily periodic rate of 0.0746%).

The Penalty Rate for Cash Advances as well as Introductory and Special Offer Cash Advances on your account may vary and will be an ANNUAL PERCENTAGE RATE equal to the Index plus a Margin of up to 23.99%. The current Margin is 23.99%. Currently this ANNUAL PERCENTAGE RATE is 27.24% (a daily periodic rate of 0.0746%).

Rates were calculated as of September 30, 2009.

Our decision was based in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why the rate increased. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. The consumer reporting agency is: Experian Inc., 701 Experian Pkwy, P.O. Box 2002, Allen, TX 75013, (888) 397-3742.

You have the right to reject this increase in your Annual Percentage Rate(s). To reject this increase, the primary account holder must contact us at 1-888-238-5058 and (i) identify the account number; and (ii) tell us they reject the increase. Alternatively, the primary account holder may instead notify us of their rejection in writing which includes their name, account number and credit card(s) cut in half in materials mailed to Cardmember Services, P.O. Box 3788, Omaha, NE 68103-3788.

If we do not receive your rejection on or before December 8, 2009, the increased rate(s) will be effective on your account. If you reject these changes before the effective date, your ability to use your account for further advances or transactions will be terminated upon your rejection.

① First National Bank
Omaha

VISA

First National Bank Omaha
P.O. Box 2557
Omaha, NE 68103-2557

042830

JENNIFER PHAN
577 PASEO REFUGIO
MILPITAS CA 95035-3907

Account Number: 9669

Page 001 of 001

Payment Due Date: December 1, 2009

New Balance: \$17,182.97

Minimum Payment Due: \$1,840.00

Make checks payable to
① First National Bank
Omaha Amount Enclosed



Change of Address? Please
check box and complete reverse side. ☐

669 0000000184000 0000001718297

PLEASE DETACH HERE AND RETURN TOP PORTION WITH YOUR PAYMENT

Visa Signature ② Card

Account Number: 9669

Payment Due		Account Summary		Credit Line	
Statement Closing Date	11-06-09	Previous Balance	\$ 16,913.16	Total Credit Limit*	\$ 16,000.00
Days in Billing Cycle	29	Payments and Credits	- \$ 0.00	Cash Limit †	\$ 8,000.00
Payment Due Date	12-01-09	New Transactions	+\$ 39.00	Available Credit	\$ 0.00
Amount Past Due	\$ 1,402.00	Total Billed		Available Cash	\$ 0.00
Minimum Payment Due	\$ 1,840.00	FINANCE CHARGES	+\$ 230.81		
		New Balance	\$ 17,182.97		

Online Access www.firstnational.com			
Need Help?			
Customer Service Toll Free 1-888-530-3626		Balance Transfer Hotline Toll Free 1-877-388-8231	TDD Telecommunications Device for the Deaf Toll Free 1-800-925-2833

TRANSACTIONS

Purchase Date	Post Date	Reference Number	Merchant Name / Transaction Description	Credits (CR) and Debits
11-02	11-06	74694519310000310062000	LATE FEE	\$39.00

Charge Summary	Average Daily Balance	Days Rate Used	Daily Periodic Rate	Corresponding Annual Percentage Rate	ANNUAL PERCENTAGE RATE
Purchases	\$ 8,322.13	29	0.0383%	13.990%	13.99%
Cash Advance	\$ 8,708.86	29	0.0548%	19.990%	20.00%
Billed Periodic Rate FINANCE CHARGES \$230.81					

Additional Information Regarding Your Account

Visa Concierge is at your service - just call Visa 24 hours a day, seven days a week at 800-953-7392.
Need to speak to a Customer Service Representative? Just call us at 877-932-3222.
Need to reach us while you are away from the United States? Dial 402-346-1553.

* Please refer to the "No Preset Spending Limit" section on the reverse side of your statement for complete details concerning the no preset spending limit and revolving credit limit.

Go Paperless for Safer Banking

Statements sitting in your mailbox can increase your risk of getting your financial information stolen. You can limit your risk by going paperless with eStatements. It provides secure access to up to 7 years of past statements and it's completely FREE. When you sign up for eStatements, we will send you an email every month letting you know your statement is ready. Log in to firstnational.com and go to Account Services tab for more information on how to enroll today!

Free Online Credit Card Payments

You can pay your credit card bill online anytime day or night at www.firstnational.com. It's fast, safe and completely secure.

① First National Bank
Omaha

VISA

First National Bank Omaha
P.O. Box 2557
Omaha, NE 68103-2557

041806

JENNIFER PHAN
577 PASEO REFUGIO
MILPITAS CA 95035-3907

Account Number: 9669
Page 001 of 001
Payment Due Date: January 2, 2010
New Balance: \$17,567.79
Minimum Payment Due: \$2,396.00

① Make checks payable to
First National Bank
Omaha Amount Enclosed



Change of Address? Please
check box and complete reverse side. ☐

9669 0000000239600 0000001756779

PLEASE DETACH HERE AND RETURN TOP PORTION WITH YOUR PAYMENT

Visa Signature ® Card

Account Number: 9669

Payment Due		Account Summary		Credit Line	
Statement Closing Date	12-08-09	Previous Balance	\$ 17,182.97	Total Credit Limit*	\$ 16,000.00
Days in Billing Cycle	32	Payments and Credits	- \$ 0.00	Cash Limit †	\$ 8,000.00
Payment Due Date	01-02-10	New Transactions	+\$ 39.00	Available Credit	\$ 0.00
Amount Past Due	\$ 1,840.00	Total Billed		Available Cash	\$ 0.00
Minimum Payment Due	\$ 2,396.00	FINANCE CHARGES	+\$ 345.82		
		New Balance	\$ 17,567.79		

Need Help? Online Access www.firstnational.com		
Customer Service Toll Free 1-888-530-3626	Balance Transfer Hotline Toll Free 1-877-388-8231	TDD Telecommunications Device for the Deaf Toll Free 1-800-925-2833

TRANSACTIONS

Purchase Date	Post Date	Reference Number	Merchant Name / Transaction Description	Credits (CR) and Debits
12-01	12-08	74694519342000342062000	LATE FEE	\$39.00

Charge Summary	Average Daily Balance	Days Rate Used	Daily Periodic Rate	Corresponding Annual Percentage Rate	ANNUAL PERCENTAGE RATE
Purchases	\$ 8,429.74	18	0.0383%	13.990%	21.03%
Purchases	\$ 8,528.12	14	0.0822%	29.990%	21.03%
Cash Advance	\$ 8,821.64	18	0.0548%	19.990%	24.40%
Cash Advance	\$ 8,915.16	14	0.0822%	29.990%	24.40%
Billed Periodic Rate FINANCE CHARGES \$345.82					

Additional Information Regarding Your Account

Visa Concierge is at your service - just call Visa 24 hours a day, seven days a week at 800-953-7392.
Need to speak to a Customer Service Representative? Just call us at 877-932-3222.
Need to reach us while you are away from the United States? Dial 402-346-1553.

* Please refer to the "No Preset Spending Limit" section on the reverse side of your statement for complete details concerning the no preset spending limit and revolving credit limit.

Go Paperless for Safer Banking

Statements sitting in your mailbox can increase your risk of getting your financial information stolen. You can limit your risk by going paperless with eStatements. It provides secure access to up to 7 years of past statements and it's completely FREE. When you sign up for eStatements, we will send you an email every month letting you know your statement is ready. Log in to firstnational.com and go to Account Services tab for more information on how to enroll today!

Free Online Credit Card Payments

You can pay your credit card bill online anytime day or night at www.firstnational.com. It's fast, safe and completely secure.

① First National Bank
Omaha

VISA

First National Bank Omaha
P.O. Box 2557
Omaha, NE 68103-2557

042699

JENNIFER PHAN
577 PASEO REFUGIO
MILPITAS CA 95035-3907

Account Number: 9669
Page 001 of 001
Payment Due Date: February 1, 2010
New Balance: \$18,045.40
Minimum Payment Due: \$3,049.00

Make checks payable to
① First National Bank
Omaha Amount Enclosed



Change of Address? Please
check box and complete reverse side. ☐

9669 0000000304900 0000001804540

PLEASE DETACH HERE AND RETURN TOP PORTION WITH YOUR PAYMENT

Visa Signature © Card

Account Number: 9669

Payment Due		Account Summary		Credit Line	
Statement Closing Date	01-07-10	Previous Balance	\$ 17,567.79	Total Credit Limit*	\$ 16,000.00
Days in Billing Cycle	30	Payments and Credits	- \$ 0.00	Cash Limit †	\$ 8,000.00
Payment Due Date	02-01-10	New Transactions	+ \$ 39.00	Available Credit	\$ 0.00
Amount Past Due	\$ 2,396.00	Total Billed		Available Cash	\$ 0.00
Minimum Payment Due	\$ 3,049.00	FINANCE CHARGES + \$	438.61		
		New Balance	\$ 18,045.40		

Important Information Regarding Your Account

If you would like to receive a Year End Summary statement for 2009, please call 1-877-388-8252 by January 30, 2010. You must call by the deadline in order to receive your 2009 Year End Summary statement.

Need Help?	Online Access	www.firstnational.com		
	Customer Service	Balance Transfer Hotline	TDD Telecommunications Device for the Deaf	
	Toll Free 1-888-530-3626	Toll Free 1-877-388-8231	Toll Free 1-800-925-2833	

TRANSACTIONS

Purchase Date	Post Date	Reference Number	Merchant Name / Transaction Description	Credits (CR) and Debits
1-02	1-07	74694510007000007062000	LATE FEE	\$39.00

Charge Summary		Average Daily Balance	Days Rate Used	Daily Periodic Rate	Corresponding Annual Percentage Rate	ANNUAL PERCENTAGE RATE
Purchases		\$ 8,708.64	30	0.0822%	29.990%	30.00%
Cash Advance		\$ 9,077.95	30	0.0822%	29.990%	30.00%
Billed Periodic Rate FINANCE CHARGES \$438.61						

Additional Information Regarding Your Account

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Free Online Credit Card Payments

You can pay your credit card bill online anytime day or night at www.firstnational.com. It's fast, safe and completely secure.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

Jennifer Philoan Phan,
First National Bank of Omaha

Plaintiff

Bankruptcy Case No.

10-50707-RLE-13

v.

Jennifer Philoan Phan,

Defendant

Adversary Proceeding No.

10-_____

**SUMMONS AND NOTICE OF TELEPHONIC STATUS CONFERENCE
IN AN ADVERSARY PROCEEDING**

YOU ARE SUMMONED and required to submit a motion or answer to the complaint which is attached to this summons to the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall submit a motion or answer to the complaint within 35 days.

Address of Clerk

**U. S. Courthouse and Federal Building
280 South First St., 3rd Fl.
San Jose, CA 95113-3099**

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney

Dennis Winters, Esq., Winters Law Firm
1820 East 17th Street, Santa Ana, California 92705

If you make a motion, your time to answer is governed by Bankruptcy Rule 7012.

YOU ARE NOTIFIED that a status conference of the proceeding commenced by the filing of the complaint will be held at the following time and place.

Address	Room
Telephonic	Date and Time

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT. PLAINTIFF SHALL PROMPTLY SERVE A COPY OF THE BANKRUPTCY DISPUTE RESOLUTION PROGRAM INFORMATION SHEET ON ALL PARTIES. A COPY OF THE INFORMATION SHEET IS AVAILABLE ON THE COURT'S WEB SITE AT WWW.CANB.USCOURTS.GOV. AND AT THE CLERK'S OFFICE. For request for personal appearance, refer to paragraph 5 of the order setting telephonic status conference.

Gloria L. Franklin

Clerk of the Bankruptcy Court

By: _____

CERTIFICATE OF SERVICE

I, _____, certify that I am, and at all times during
(name)

service of process was, not less than 18 years of age and not a party to the matter concerning which service
process was made. I further certify that the service of this summons and a copy of the complaint was

_____ by:
(date)

☐ Mail service: Regular, first class United States mail, postage fully pre-paid, addressed to:

☐ Personal Service: by leaving the process with defendant or with an officer or agent of defendant at:

☐ Residence Service: By leaving the process with the following adult at:

☐ Publication: The defendant was served as follows: [Describe briefly]

☐ State Law: The defendant was served pursuant to the laws of the State _____ ,
as follows: [Describe briefly] (name of state)

Under penalty of perjury, I declare that the foregoing is true and correct.

Date

Signature

Print Name Dennis Winters, Esq., Winters Law Firm		
Business Address 1820 East 17th Street		
City Santa Ana	State CA	Zip 92705

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS FIRST NATIONAL BANK OF OMAHA	DEFENDANTS JENNIFER PHILOAN PHAN	
ATTORNEYS (Firm Name, Address, and Telephone No.) DENNIS WINTERS, ESQ., WINTERS LAW FIRM 1820 E. 17th Street, Santa Ana, CA 92705, 714-836-1381	ATTORNEYS (If Known)	
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Complaint seeking an exception to discharge pursuant to 11 U.S.C. Section 523(a)(2)(A), for purchases and a cash advance prior to the bankruptcy filing.		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>FRBP 7001(1) – Recovery of Money/Property</p> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other </div> <div style="width: 48%;"> <p>FRBP 7001(6) – Dischargeability (continued)</p> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <p>FRBP 7001(2) – Validity, Priority or Extent of Lien</p> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property</div> <div style="width: 48%;"> <p>FRBP 7001(7) – Injunctive Relief</p> <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <p>FRBP 7001(3) – Approval of Sale of Property</p> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)</div> <div style="width: 48%;"> <p>FRBP 7001(8) Subordination of Claim or Interest</p> <input type="checkbox"/> 81-Subordination of claim or interest </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <p>FRBP 7001(4) – Objection/Revocation of Discharge</p> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)</div> <div style="width: 48%;"> <p>FRBP 7001(9) Declaratory Judgment</p> <input type="checkbox"/> 91-Declaratory judgment </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <p>FRBP 7001(5) – Revocation of Confirmation</p> <input type="checkbox"/> 51-Revocation of confirmation</div> <div style="width: 48%;"> <p>FRBP 7001(10) Determination of Removed Action</p> <input type="checkbox"/> 01-Determination of removed claim or cause </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <p>FRBP 7001(6) – Dischargeability</p> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input checked="" type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <p style="text-align: center;">(continued next column)</p> </div> <div style="width: 48%;"> <p>Other</p> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) </div> </div>		
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ 18 (000)	
Other Relief Sought None		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR JENNIFER PHILOAN PHAN		BANKRUPTCY CASE NO. 10-50707-RLE-13
DISTRICT IN WHICH CASE IS PENDING NORTHERN DISTRICT OF CALIFORNIA	DIVISION OFFICE SAN JOSE	NAME OF JUDGE Hon. Roger L. Efremsky
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ DENNIS WINTERS		
DATE 05/14/2010	PRINT NAME OF ATTORNEY (OR PLAINTIFF) DENNIS WINTERS, ESQ. STATE BAR NO. 89872	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.